

EXHIBIT 5

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

IN RE:)	
)	CHAPTER 11
HIGHLAND CAPITAL)	
MANAGEMENT, L.P.,)	CASE NO.
)	19-34054-sgj11
Reorganized Debtor.)	
_____)	
)	
HIGHLAND CAPITAL)	
MANAGEMENT, L.P.,)	
)	
Plaintiff,)	Adv. No.
)	21-03010-sgj
VS.)	
)	
HIGHLAND CAPITAL FUND)	
MANAGEMENT FUND ADVISORS,)	
L.P. and NEXPOINT)	
ADVISORS, L.P.,)	
)	
Defendants.)	

REMOTE ORAL DEPOSITION OF
FRANK WATERHOUSE
MONDAY, MARCH 28, 2022

REPORTED BY:
JANICE K. McMORAN, CSR, RDR, CRR, TCRR
JOB NO. 207406

<p style="text-align: right;">Page 262</p> <p>1 F. WATERHOUSE</p> <p>2 A. That's what this projection denotes.</p> <p>3 Q. Okay. Last few questions. There</p> <p>4 came a time in Q4 2020 when the advisors</p> <p>5 stopped making payments under the shared</p> <p>6 services and the subadvisory agreements,</p> <p>7 correct?</p> <p>8 A. I'm sorry. I just want to go back to</p> <p>9 the projected operating cash flows. Again, at</p> <p>10 this time when this was prepared, there was</p> <p>11 nothing that we were aware of could change</p> <p>12 payment-wise for the shared services and</p> <p>13 subadvisory expenses due to the stay.</p> <p>14 Q. Okay. And when you use the word "we"</p> <p>15 there, you're referring specifically to you,</p> <p>16 Mr. Caruso, Mr. Ellington, Mr. Leventon, and</p> <p>17 Mr. Klos. Do I have that correct?</p> <p>18 A. Yes. Sorry. I use "we"</p> <p>19 collectively. But it was out of those</p> <p>20 discussions where I was told by Mr. Klos,</p> <p>21 Mr. Ellington, and Mr. Leventon that nothing</p> <p>22 could change, I mean, until -- and like I</p> <p>23 testified earlier was nothing can change now,</p> <p>24 deal with it at a later date. I didn't -- at</p> <p>25 this time we didn't -- I didn't have an</p>	<p style="text-align: right;">Page 263</p> <p>1 F. WATERHOUSE</p> <p>2 understanding, neither did Dave, what a later</p> <p>3 date meant. Well, actually, take that back. I</p> <p>4 didn't have an understanding about what a later</p> <p>5 date meant, so if you're putting the other</p> <p>6 projection at this time, I mean, that's the</p> <p>7 best available information we have.</p> <p>8 Q. You mentioned the later date. You</p> <p>9 haven't said that all day today. Who mentioned</p> <p>10 a later date?</p> <p>11 A. I said that earlier. That was when</p> <p>12 we were talking with Fred. You can go back.</p> <p>13 Yeah, at a later date. He said you can deal</p> <p>14 with it at a later time, a later date.</p> <p>15 Q. So Fred told you that?</p> <p>16 A. Yeah. I mean, there was -- there was</p> <p>17 someone in this -- someone in this part of the</p> <p>18 discussion said we will deal with it later.</p> <p>19 Q. Can you identify the person who said</p> <p>20 that?</p> <p>21 A. I don't know. But someone -- someone</p> <p>22 in this process said we will deal with it</p> <p>23 later.</p> <p>24 Q. Okay. But you can't identify the</p> <p>25 person who said that, correct?</p>
<p style="text-align: right;">Page 264</p> <p>1 F. WATERHOUSE</p> <p>2 A. I can't.</p> <p>3 Q. Okay. Did you ever raise this issue</p> <p>4 with me or any of my colleagues at Pachulski?</p> <p>5 A. I did not.</p> <p>6 Q. And you knew in December of 2019 and</p> <p>7 January of 2020 that my firm was bankruptcy</p> <p>8 counsel to the debtor, correct?</p> <p>9 A. Yes.</p> <p>10 Q. All right. So back to Q4 2020.</p> <p>11 There came a time during that period when the</p> <p>12 advisors stopped making any payments under the</p> <p>13 shared services agreements or the payroll</p> <p>14 reimbursement agreements, correct?</p> <p>15 A. That is correct.</p> <p>16 Q. Okay. Do you remember why that</p> <p>17 happened?</p> <p>18 A. Generally.</p> <p>19 Q. Did Mr. Dondero instruct you not to</p> <p>20 make any further payments of any kind to</p> <p>21 Highland during the fourth quarter of 2020?</p> <p>22 A. Yes.</p> <p>23 Q. And is that the reason that --</p> <p>24 withdrawn.</p> <p>25 When you received that instruction</p>	<p style="text-align: right;">Page 265</p> <p>1 F. WATERHOUSE</p> <p>2 from Mr. Dondero, did you convey that to</p> <p>3 Mr. Klos and Ms. Hendrix?</p> <p>4 A. I remember telling Mrs. Hendrix. I</p> <p>5 don't recall if I told Mr. Klos.</p> <p>6 Q. Do you recall if you ever told</p> <p>7 Mr. Seery about the direction that you received</p> <p>8 from Mr. Dondero?</p> <p>9 A. I -- I didn't -- I don't recall.</p> <p>10 Q. Do you know if Highland continued to</p> <p>11 provide services under the shared services</p> <p>12 agreements and the payroll reimbursement</p> <p>13 agreements during the periods that the advisors</p> <p>14 made no payments to Highland?</p> <p>15 A. Is your question did Highland provide</p> <p>16 services under the shared services without</p> <p>17 being -- yes.</p> <p>18 Q. Okay. Are you aware of any specific</p> <p>19 service under the shared services agreements</p> <p>20 that Highland failed to provide at any time</p> <p>21 from the petition date until they were</p> <p>22 terminated in early 2021?</p> <p>23 A. I'm not aware.</p> <p>24 Q. Did you ever have any discussion with</p> <p>25 anybody at any time about Highland's failure or</p>

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 2 alleged failure to provide any services under
 3 the shared services agreement at any time from
 4 the petition date until they were terminated in
 5 early 2021?
 6 A. Not that I recall.
 7 Q. After the petition date, did you
 8 receive any money from either NexPoint or
 9 HCMFA, you personally?
 10 MS. HARTMANN: I'm going to object to
 11 that as irrelevant. There's already been a
 12 settlement, John. We don't want to get into
 13 anything like that.
 14 MR. MORRIS: Okay. I appreciate
 15 that, and I'm really -- I promise you that I'm
 16 not asking this for any attempt to take
 17 discovery against Frank. But I have two
 18 entities here, HCMFA and NexPoint, who are
 19 claiming that they overpaid Highland because
 20 Highland didn't provide services that they were
 21 entitled to, and I think it's completely
 22 relevant to know whether or not those entities
 23 were also making payments to Highland's
 24 employees that were not disclosed.
 25 So I'll ask my question again, and if

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 2 Highland's employ?
 3 A. From HCMFA, no.
 4 Q. Did you receive any payments from
 5 NexPoint at any time from the petition date
 6 until the day that you left Highland's employ?
 7 MS. HARTMANN: Objection on
 8 relevance.
 9 A. Yes.
 10 Q. (By Mr. Morris) Okay. How many
 11 payments did you receive from NexPoint after
 12 the petition date but before you left
 13 Highland's employ?
 14 MS. HARTMANN: Objection to form and
 15 relevance.
 16 A. One.
 17 Q. (By Mr. Morris) Okay. Do you
 18 remember the amount of that payment?
 19 A. Approximately.
 20 Q. And what's the approximate amount of
 21 that payment?
 22 MS. HARTMANN: Objection, form and
 23 relevance, and it's subject to a settlement
 24 already.
 25 A. \$90,000.

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 2 you want to instruct him not to answer, that's
 3 certainly, you know, within your ability. But I
 4 think it's -- I think it's very relevant, and
 5 everybody should be, you know, aware that we're
 6 going to be raising this issue at the trial. So
 7 let me just ask one more time.
 8 Q. (By Mr. Morris) Mr. Waterhouse, I
 9 again --
 10 MS. HARTMANN: Break up the entities
 11 and please do ask whether they were disclosed
 12 to anyone.
 13 MR. MORRIS: Well, let me start --
 14 let me start my questions and then we'll see
 15 where we get.
 16 Q. (By Mr. Morris) Mr. Waterhouse, did
 17 you receive any payments of any kind after the
 18 petition date from HCMFA?
 19 MR. RUKAVINA: Through what date?
 20 He's a current employee.
 21 MR. MORRIS: Okay. Thank you,
 22 Mr. Rukavina.
 23 Q. (By Mr. Morris) Mr. Waterhouse, did
 24 you ever receive any payments from HCMFA from
 25 the petition date until the day you left

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 2 Q. (By Mr. Morris) And do you know the
 3 circumstances under which that payment was made
 4 to you?
 5 MS. HARTMANN: Same objection.
 6 A. I guess I don't understand the
 7 question.
 8 Q. (By Mr. Morris) Do you know why
 9 NexPoint paid you \$90,000 after the petition
 10 date when you were an employee of Highland?
 11 MS. HARTMANN: Same objection.
 12 A. I don't know the specifics, but --
 13 Q. (By Mr. Morris) Did you have a
 14 conversation with anybody in the world about
 15 why you were paid \$90,000 from NexPoint after
 16 the petition date?
 17 MS. HARTMANN: Objection to form.
 18 And obviously, he's not asking you about
 19 lawyers.
 20 A. No. I was -- I was told by the
 21 director of HR that I was going to receive a
 22 payment.
 23 Q. (By Mr. Morris) And that director is
 24 Mr. Collins?
 25 A. Yes.

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2 Q. And when did Mr. Collins tell you

3 that you would be receiving a payment from

4 NexPoint?

5 A. I don't recall the date.

6 Q. Did you ever discuss this payment --

7 excuse me, I'm sorry. Withdrawn.

8 Did you ever discuss this payment

9 with anybody other than Mr. Collins?

10 MS. HARTMANN: Same objection of

11 relevance and form, and don't reveal privilege.

12 A. I don't -- I mean, I don't -- I don't

13 remember.

14 Q. (By Mr. Morris) Did you ever discuss

15 this payment with Mr. Dondero?

16 MS. HARTMANN: Objection, relevance.

17 A. I don't recall.

18 Q. (By Mr. Morris) Did you ever discuss

19 this payment with anybody other than

20 Mr. Collins or your counsel that you can

21 recall?

22 MS. HARTMANN: Asked and answered.

23 A. I don't remember.

24 Q. (By Mr. Morris) Okay. As the

25 treasurer of NexPoint, are you aware of any

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2 MS. HARTMANN: Objection, form.

3 A. Mr. Collins told me.

4 Q. (By Mr. Morris) I apologize, but

5 going back to the payment that you received

6 from NexPoint, did Mr. Collins give you any

7 explanation as to why NexPoint was making that

8 payment to you?

9 MS. HARTMANN: Objection to form.

10 A. Not that I recall.

11 Q. (By Mr. Morris) Do you recall if you

12 asked Mr. Collins why NexPoint was making that

13 payment to you?

14 MS. HARTMANN: Objection, form.

15 A. I don't -- I don't remember.

16 Q. (By Mr. Morris) Did Mr. Collins

17 explain to you why NexPoint was making a

18 post-petition payment to Mr. Ellington?

19 MS. HARTMANN: Objection, form.

20 A. I don't -- I don't recall.

21 Q. (By Mr. Morris) Did you ask

22 Mr. Ellington -- withdrawn.

23 Did you ask Mr. Collins why NexPoint was

24 making a post-petition payment to Mr. Ellington?

25 MS. HARTMANN: Objection, form.

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2 payments that NexPoint made after the petition

3 date through the end of 2020 to Scott

4 Ellington?

5 MS. HARTMANN: Objection, form and

6 relevance.

7 A. Yes.

8 Q. (By Mr. Morris) Okay. Do you know

9 how many payments were made by NexPoint to

10 Mr. Ellington after the petition date but

11 before December 30th, 2020?

12 MS. HARTMANN: Objection, form.

13 A. I'm aware of one.

14 Q. (By Mr. Morris) Are you aware of the

15 approximate amount of that payment?

16 MS. HARTMANN: Objection, form.

17 A. I don't recall.

18 Q. (By Mr. Morris) Do you recall how

19 you became aware of that payment?

20 MS. HARTMANN: Objection to form.

21 A. Yes.

22 Q. (By Mr. Morris) How did you learn of

23 the payment by NexPoint to Mr. Ellington after

24 the petition date but before December 31st,

25 2020?

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2 A. I don't remember having that

3 discussion.

4 Q. (By Mr. Morris) As the treasurer of

5 NexPoint, did you authorize the making of the

6 payments to you and to Mr. Ellington?

7 MS. HARTMANN: Objection, form.

8 A. No.

9 Q. (By Mr. Morris) Do you know who --

10 do you have any understanding as to who

11 authorized the payments to you and to

12 Mr. Ellington?

13 A. It was -- my understanding is it was

14 Mr. Dondero.

15 Q. Okay. Do you know if NexPoint made

16 any post-petition payments to Isaac Leventon?

17 MS. HARTMANN: Objection, form.

18 A. Yes.

19 Q. (By Mr. Morris) And how did you

20 learn that?

21 A. From Mr. Collins.

22 Q. Did Mr. Collins tell you how much

23 NexPoint had paid to Mr. Leventon?

24 MS. HARTMANN: Objection, form.

25 A. I don't remember.

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2 Q. (By Mr. Morris) Did Mr. Collins

3 explain to you why NexPoint was paying money to

4 Mr. Leventon?

5 MS. HARTMANN: Objection to form.

6 A. I don't recall.

7 Q. (By Mr. Morris) Do you recall if you

8 asked Mr. Collins why NexPoint was paying money

9 to Mr. Leventon?

10 MS. HARTMANN: Objection, form.

11 A. Same as before. I don't -- I didn't

12 ask.

13 Q. (By Mr. Morris) Do you -- as the

14 treasurer of NexPoint, do you know if the

15 payments to you and to Mr. Waterhouse --

16 withdrawn.

17 As the treasurer of NexPoint, do you

18 know if the payments to you and Mr. Ellington and

19 Mr. Leventon are reflected on NexPoint's books

20 and records?

21 MS. HARTMANN: Objection, form.

22 A. Yes.

23 Q. (By Mr. Morris) And would they --

24 where in the books and records would the

25 payments be reflected?

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2 meeting? By e-mail? How did he make you aware

3 of those payments?

4 MS. HARTMANN: Objection, form.

5 A. It was just a conversation.

6 Q. (By Mr. Morris) Okay. And was there

7 just one singular conversation that covered all

8 the payments to the four individuals that we've

9 identified, or was it more than one

10 conversation?

11 MS. HARTMANN: Objection to form.

12 A. I don't remember.

13 Q. (By Mr. Morris) Do you know if

14 NexPoint made one or more payments to

15 Mr. Surgent?

16 Are you thinking, Mr. Waterhouse? your

17 screen froze, at least for me.

18 MR. MORRIS: Is it frozen for anybody

19 else?

20 THE REPORTER: Yes.

21 (Off the record to resolve Zoom

22 issue.)

23 MS. HARTMANN: Here, I'm going to

24 give him my screen.

25 MR. MORRIS: Perfect.

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2 MS. HARTMANN: Objection, form.

3 A. They would be on the P&L -- on the

4 income statement.

5 Q. (By Mr. Morris) Okay. After the

6 petition date, did NexPoint make any payments

7 to Thomas Surgent?

8 MS. HARTMANN: Objection, form.

9 A. Yes.

10 Q. (By Mr. Morris) And how did you

11 learn that NexPoint had made one or more

12 payments to Mr. Surgent after the petition

13 date?

14 MS. HARTMANN: Objection, form.

15 A. I talked with Mr. Collins.

16 MR. MORRIS: La Asia, you can take

17 down the exhibit.

18 Q. (By Mr. Morris) Mr. Waterhouse, so

19 you discussed the payments that were being made

20 by NexPoint to you and Mr. Leventon,

21 Mr. Ellington, and Mr. Surgent, correct?

22 MS. HARTMANN: Objection to form.

23 A. I was made aware of it.

24 Q. (By Mr. Morris) Okay. And did he

25 make you aware of them in a conversation? In a

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2 THE WITNESS: Sorry.

3 MR. MORRIS: Thank you. No problem.

4 Q. (By Mr. Morris) Do you know whether

5 the payments that were made -- withdrawn.

6 Do you know whether NexPoint made any

7 payments to any Highland employee after the

8 petition date other than to the four people that

9 we've identified?

10 MS. HARTMANN: Objection to form.

11 A. I don't -- I don't know.

12 Q. (By Mr. Morris) You're not aware of

13 any?

14 A. I'm -- I don't know. I'm not aware.

15 Q. Okay. Do you know if anybody ever

16 informed Highland's board of independent

17 directors of any of these payments prior to

18 confirmation in early February 2021?

19 MS. HARTMANN: Objection to form.

20 A. I'm -- you know, that -- typically

21 things like this are -- our compliance group

22 does that, right? So I don't know -- I don't

23 know what Thomas did.

24 Q. (By Mr. Morris) Did you personally

25 ever tell any of the independent board members

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2 of the payments that -- the payment that you

3 received?

4 MS. HARTMANN: Objection to form.

5 A. I did not.

6 Q. (By Mr. Morris) Okay. Do you know

7 if any recipient of any of the payments ever

8 informed any member of the independent board

9 about any of the payments that were made by

10 NexPoint to the four individuals we've

11 identified?

12 A. I'm not aware.

13 Q. Do you know if anybody ever informed

14 me or anybody at my firm of any of the payments

15 that we've described as having been made by

16 NexPoint post-petition?

17 MS. HARTMANN: Objection, form.

18 A. I'm not aware.

19 MR. MORRIS: I have no further

20 questions.

21 Mr. Waterhouse, thank you very much.

22 I always appreciate your indulgence.

23 MR. RUKAVINA: Let's take a 10-minute

24 break, and I'll try to get done in 30, 45

25 minutes.

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2 are laid out in the reimbursement agreement,

3 NexPoint or HCMFA would pay that allocable

4 cost.

5 Q. (By Mr. Rukavina) And obviously

6 you're a CPA, you're a highly sophisticated

7 man. What do you understand the word

8 reimbursement to mean?

9 A. I mean, reimbursement is to, again,

10 reimburse an entity or someone for, like I

11 said, costs that have been incurred. So you're

12 reimbursing them for, you know, those -- those

13 costs -- I mean, for these agreements, it's

14 those costs. So they're -- so the net effect

15 is they're not out, you know, any dollars.

16 It's like you get reimbursed, you know, if you

17 have an employee expense and you get reimbursed

18 for -- let's say you get paid -- your firm pays

19 lunch, you get reimbursed for lunch, right?

20 Something to that effect.

21 Q. So was there an intent in these

22 contracts when you signed them that Highland

23 make a profit under these contracts, the two

24 payroll reimbursement agreements?

25 MR. MORRIS: Objection to the form of

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2 (Recess taken 4:52 p.m. - 5:06 p.m.)

3 EXAMINATION

4 BY MR. RUKAVINA:

5 Q. Mr. Waterhouse, good afternoon.

6 A. Good afternoon.

7 Q. You were asked about the payroll

8 reimbursement agreements.

9 MR. RUKAVINA: Mr. Nguyen, why don't

10 you just pull up my Number 3 just so that

11 Mr. Waterhouse has it in front of him.

12 Q. (By Mr. Rukavina) So obviously it's

13 called a reimbursement agreement. It uses the

14 word reimbursement repeatedly. It talks about

15 reimbursement to Highland. How did you

16 understand the word reimbursement to apply or

17 what did it mean to you when you signed this

18 agreement?

19 MR. MORRIS: Objection to the form of

20 the question.

21 A. I think it's consistent with what I

22 testified with Mr. Morris is that the purpose

23 of the agreement was to reimburse Highland for

24 costs that it incurred. So to the extent that

25 costs were incurred for the individuals that

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2 the question.

3 A. That was not my understanding.

4 Q. (By Mr. Rukavina) That would be

5 incompatible with your understanding of the

6 word reimbursed, correct?

7 A. Yes.

8 Q. Was there an intent for these two

9 payroll reimbursement agreements that Highland

10 mark up its actual costs?

11 MR. MORRIS: Objection to the form of

12 the question.

13 A. Not that I was aware of.

14 Q. (By Mr. Rukavina) Again, that would

15 be incompatible with your understanding of the

16 word reimbursement?

17 A. Yes.

18 Q. Now, Mr. Morris took you through how

19 the agreements talk about reimbursement, and

20 then they set a monthly amount. Was it your

21 understanding that the fundamental purpose of

22 these two contracts was to provide for

23 reimbursements or to pay those monthly amounts

24 as set amounts, as set dollar amounts?

25 MR. MORRIS: Objection to the form of